

DEPARTMENT OF WORKFORCE DEVELOPMENT  
DIVISION OF WORKFORCE SOLUTIONS  
ADMINISTRATOR'S MEMO SERIES

NOTICE 03-33

ISSUE DATE: 12/23/2003  
DISPOSAL DATE: Ongoing

RE: Displacement of Regular  
Employees by W-2, WtW,  
and WIA Participants:  
Grievance Policies and  
Procedures

To: W-2 Agency Directors  
Workforce development Board Directors  
Job Center Complaint Coordinators  
County Departments of Human Services Directors  
County Departments of Social Services Directors  
Tribal Chairpersons/Human Services Facilitators  
Tribal Economic Support Directors

From: Bettie A. Rodgers /s/  
Division Administrator

### **Purpose**

This memorandum outlines prohibitions on the displacement of regular employees of work-training providers by federally subsidized participants in Wisconsin Works (W-2), Welfare-to-Work (WtW), and Workforce Investment Act (WIA) programs and describes procedures for resolving displacement complaints.

### **Background**

Federal law and regulations governing Temporary Assistance for Needy Families (TANF), the Welfare-to-Work (WtW), and Workforce Investment Act (WIA) programs prohibit displacement of regular workers by federally subsidized participants in these programs. Although the specific language pertaining to these prohibitions differs from program to program and may include more specific prohibitions beyond those listed below, in general an employer cannot:

- terminate a regular employee or otherwise reduce its workforce for the purpose of placing an individual in a federally subsidized employment position, or

- fill a position with a federally subsidized workforce participant when any other person is on layoff from the same or a substantially equivalent job within the same organizational unit.

These prohibitions are also included in the State administrative rules pertaining to the State's principal TANF program, Wisconsin Works (W-2), and in the State's WtW and WIA program policies.

Federal regulations also require states receiving federal funds for these programs to establish and maintain grievance procedures for resolving complaints of alleged displacement of regular employees. Here again, the specific requirements vary across programs, but generally require that the grievance policy specify the State agency responsible for administering the grievance procedure and include provisions for notifying the public about the grievance policies and procedures. Federal TANF policy guidance also encourages states participating in both TANF and WtW to establish joint displacement grievance procedures for both programs.

We are not aware of any problems resulting from the grievance policies as separately promulgated to date under W-2, WtW, and WIA. However, given the similarity of the requirements applicable to all three programs, and in view of ongoing efforts to integrate these programs, the Division has determined that a single procedure shared by all three programs is the most appropriate way to administer the displacement policies applicable to each.

### **Joint grievance procedure**

The DWS *Administration of Workforce Programs Policy and Procedure Manual* (part of the *Workforce Programs Guide* accessible on line at:

[http://www.dwd.state.wi.us/dws/manuals/workforce/pdf/wpg\\_toc.pdf](http://www.dwd.state.wi.us/dws/manuals/workforce/pdf/wpg_toc.pdf))

currently includes a section on "Complaints/Grievances and Appeals." That section is being revised to include a new subsection covering complaints against employers/work-training providers, operating under agreement with DWS grantees or subcontractors, about the effects (including displacement) of workforce program operations. This new subsection, a copy of which is attached to this Memorandum, sets forth:

- Steps a complainant must take to file a complaint;
- Program agency responsibilities for initial review and investigation of a complaint;
- Procedures and time limits for hearing complaints and issuing decisions; and
- Provisions for appealing program agency action on a complaint.

Henceforth, the procedure outlined in this subsection of the *Workforce Programs Policy and Procedure Manual* will be the procedure for resolving complaints of employee displacement under W-2, WtW, and WIA.

### **Revisions to program-specific policies and procedures**

Although all three programs will use the same grievance procedure, program-specific differences either in the language of the applicable federal rules or in the structure of program operations may make it necessary to issue more detailed guidance on how each program will use the grievance procedure. Additional program-specific operations memos or other instructions will address changes to specific program manuals, contract or grant agreement

language, office policies and work routines, or other policies, procedures, or documents affected by the adoption of shared grievance procedure.

Contacts: DWS Regional Offices

**Revisions to DWS Workforce Programs Policy and Procedure Manual [ellipsis marks (.....) indicate intervening unchanged passages]**

## **S. COMPLAINTS/GRIEVANCES AND APPEALS.**

These are the procedures DWS, DWS grantees/contractors, employees, applicants for/participants in DWS-funded programs, and other parties affected by the operations of DWS-funded programs shall use to resolve complaints/grievances and appeals regarding alleged violations of DWS grants, its related regulations, applicable Wisconsin statutes, other applicable federal or state requirements, the provisions of this document, or the terms of a DWS grant agreement or contract.

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### **4. Requirements for Complaints/Grievances Alleging Noncriminal Violations Other Than Discrimination**

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**c. Employer/Work-training Provider as Respondent.** When an employer or work-training provider acting under agreement with a DWS grantee/contractor is a respondent to complaints/grievances about the administration, implementation, and operation of DWS-funded employment and training programs, including complaints of unlawful employee displacement by a DWS program participant, the following procedures must be used:

- (1) The complainant shall file a written complaint/grievance within one year after the alleged violation took place.
- (2) The grantee or contracting agency shall review the complaint/grievance to determine if it was filed within the one-year time limit and if it falls within the jurisdiction of the DWS grantee/contractor and meets grievance/complaint criteria under WIA, WtW, or TANF/W-2. If the criteria are not met, the grantee shall provide the complainant with written notice of the rejection of the complaint/grievance and the reasons for that rejection. If the criteria are met, the grantee/contractor shall provide the complainant with written notice of the acceptance. The filing date shall be included in the notice.
- (3) After accepting the complaint/grievance, the DWS grantee/contractor shall contact the respondent, investigate the complaint, and attempt to reach an informal resolution.
- (4) If an informal resolution cannot be reached, the grantee/contractor shall:
  - (a) Conduct a hearing within 30 calendar days of the filing date.
  - (b) Issue a decision to both the complainant and respondent within 60 calendar days of the filing date.
- (5) Format for written decision.
  - (a) Summary Statement that identifies issue(s) being contested and which caused the hearing to be called. Include citation of law(s), rule(s), regulation(s) policy(ies) and agreements alleged to have been violated.
  - (b) Findings of Facts which enumerates items the hearing examiner accepts as facts based upon demonstration of support (documentation) from complainant's and respondent's presentation of facts and opinions.
  - (c) Conclusion is brief summary of the facts which affirm or deny assertions made by parties at the hearing.
  - (d) Decision should be based on the conclusion(s) and provide a remedy for final resolution.

- (e) Appeal rights must be included in the written decision. This statement of appeal rights shall include how, where and how much time the aggrieved party has to appeal the decision.
- (6) After receiving an adverse decision or no decision on a complaint/grievance within thirty calendar days, either the complainant or the respondent (or both) may file an appeal requesting a state-level independent review. This appeal must be filed with DWS within the following time limitations:
  - (a) The complainant and/or respondent must file the appeal within 10 calendar days after they received the decision; or
  - (b) If the complainant and/or respondent did not receive a decision, they must file the appeal within 15 calendar days after the decision was due.
- (7) After accepting a complaint/grievance that has been appealed from the grantee/contractor level requesting a state level review, the DWS administrator, on behalf of the Governor, shall review the case and issue a final decision within 30 calendar days after the appeal was filed.
- (8) Appeal. A complaint alleging that DWS on behalf of the Governor has not issued a decision within 60 days after a complaint is filed or the party to such decision receives an adverse decision may appeal these issues to the Secretary of Labor if federal regulations governing the program in question so provide. The Secretary shall make a final determination no later than 120 days after receiving such an appeal.